

SERIAL NO.: 10/762,657
Attorney Docket No. CHEN-0002

elected subject matter, in this case the composition comprising phosphatidylserine and phosphatidic acid. See MPEP §819. The examiner clearly indicated that the product, and not any method, was being examined in the first Office action. Shifting to a method at this point is not a matter of right." Office Action at Page 2.

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However, the applicant is not shifting his invention. Since the year 1923, the policy of the U.S. patent office has been that where a product is elected, there is NO SHIFT if the invention is in the process. As stated in the MPEP §820:

"Where a product is elected, there is no shift where examiner holds invention to be in the process. *Ex parte Grier*; 1923 C.D. 27, 309 O.G. 223 (Comm'r Pat. 1923)." (Emphasis by author).

Therefore, applicant's amending the claims to claim a method, is not a shift to another invention, and applicant thus has the right to amend his claims to claim a method of making the compositions.

For the above reasons, Applicant respectfully submits that all of the rejections have been successfully traversed. Applicant respectfully requests that claims as amended be allowed. On the basis of the above remarks, early consideration of this application and early allowance are respectfully requested.

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